

IN THE INCOME TAX APPELATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA No. 5425/Del/2016**

A.Y. : 2009-10

OPUS REALITY DEVELOPMENT LTD.  
404, ROOTS TOWER,  
DISTRICT CENTRE,  
LAXMI NAGAR,  
DELHI  
(PAN: AAACO9775H)

Vs. DCIT, CIRCLE 19(1),  
ROOM NO. 221,  
C.R. BUILDING,  
NEW DELHI

**(Appellant)**

**(Respondent)**

Assessee by : Sh. Vinay Kumar, CA  
Department by : Ms. Rinku Singh, Sr. DR

**ORDER**

**PER H.S. SIDHU, JM**

This appeal by the Assessee is directed against the Order dated 03.8.2016 of the Ld. Commissioner of Income Tax (Appeals)-7, New Delhi pertaining to assessment year 2009-10.

2. The grounds of appeal raised in the assessee's appeal read as under:-

- i) *The AO has completed the assessment in this case and made an impugned addition of Rs. 1,00,39,564/- on account of professional charges paid by the assessee*

*company for availing the professional services on account of techno feasibility studies on their proposed construction projects, which was confirmed by the Hon'ble Tribunal 'E' Bench, New Delhi.*

- ii) The AO has initiated penalty proceedings u/s. 271(1)© of the Act and passed the order on 31.3.2014 levying the penalty of Rs. 34,12,448/- in this case, which was confirmed by the Ld. CIT(A).*
- iii) The Ld. CIT(A) has erred in law and facts of the case while confirming the penalty of Rs. 34,12,448/- holding that the assessee company has concealed the particulars of its income by furnishing inaccurate particulars thereof, whereas the facts remains that the assessee has disclosed all particulars of its income in the return of income filed before the revenue authorities. The said action of the Ld. CIT(A) is totally uncalled for and is untenable in law, hence, liable to be deleted in its entirety.*
- iv) It is prayed that the aforesaid penalty so imposed be deleted.*
- v) That the appellant craves the right to add, amend, alter or delete any of the ground of appeal at the time of presentation of the appeal.*

3. Assessee has also filed separate Application for admission of additional grounds in Appeal vide Paper Book containing pages 1 to 11 in which the assessee has stated that in view of the settled decision in the case of NTPC 229 ITR 383 (SC), (legal ground can be raised for first time in collateral and

second round also). He further stated that since the issue is purely legal based on facts already on record, the assessee may be allowed to raise the following additional ground in the interest of natural justice:-

*"Ground 6: That proper satisfaction has not been recorded while completing the assessment proceedings, hence, the notice issued under section 274 of the Act, and the order passed under section 271(1)© of the Act are illegal, bad in law and without jurisdiction."*

*Ground 7: That the penalty has been initiated vide notice under section 274 read with section 271(1)© of the Act dated December 15, 2011 without any specific charge, hence, the said notice and the order passed their against under section 271(1)© of the Act are illegal, bad in law and without jurisdiction.*

*Ground no. 11: That the penalty under section 271(1)© of the Act has been imposed without any specific charge, hence the order passed under section 271(1)© of the Act is illegal and bad in law."*

3.1 Ld. Counsel of the Assessee requested that keeping in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC 229 ITR 383 (SC) (Supra), the additional grounds raised by the assessee in all the three appeals may be admitted and decided first.

4. On the contrary, Ld. DR strongly opposed the admission of additional grounds (legal) raised by the assessee.

5. After hearing both the parties as well as perusing the additional ground alongwith the orders passed by the Revenue Authorities, we are of the considered view that in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383 (Supra), the additional grounds raised by the assessee vide Application attached with the Paper Book are purely legal ground and did not require fresh facts which is to be investigated and goes to the root of the matter. In the interest of justice, we admit the aforesaid additional grounds raised by the assessee, in view of the case law of NTPC Limited (Supra) and proceed to decide the additional grounds first.

6. The brief facts of the case are that assessee filed its return of income on 30.9.2009 declaring total income at Rs. 1,12,19,604/- for assessment year 2009-10. The assessment was completed in this case on 15.12.2011 and AO made the addition of Rs. 1,00,39,564/- on account of professional charges paid by the assessee company to M/s Opus Properties Limited for various services rendered and for providing Techno feasibility studies on their proposed construction projects. The AO has initiated the penalty proceedings u/s. 271(1)© of the Income Tax Act, 1961 and passed the order on 31.3.2014 levying the penalty of Rs. 34,12,448/- in this case.

7. Against the Penalty order the Assessee appealed before the Id. CIT(A), who vide his impugned order dated 03.8.2016 has dismissed the appeal of the assessee thereby confirming the penalty in dispute.

8. At the time of hearing, Ld. Counsel of the Assessee draw our attention towards the assessment order dated 15.12.2011 passed u/s. 143(3) of the Act and has stated that the AO while completing the assessment has not recorded the satisfaction and has not initiated the penalty proceedings. Similarly, at the time of imposing the penalty u/s. 271(1)© of the Act, the AO has levied the penalty, but did not mention under which limb the penalty has been imposed whether it is on account of inaccurate particulars of income or concealment of income in the notice as well as in the penalty order. On this count, he stated that entire penalty proceedings stand vitiated as the assessment order as well as penalty order itself is not in accordance with law and in order to support his contention, he placed the reliance on the following decisions, by filing the copies thereof.

- Hon'ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.
- ITAT, Delhi 'D' Bench decision dated 28.6.2017 in the case of Yum! Restaurants (India) (P.) Ltd. (2017) 88 taxmann.com 914 (Delhi-Trib.)

In view of above, he requested that the penalty in dispute may be cancelled and appeal of the assessee may be allowed.

9. On the contrary, Ld. DR relied upon the orders of the authorities below.

10. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the assessment order dated 15.12.2011 passed u/s. 143(3) of the Act and found that AO while completing the assessment has not recorded the satisfaction and has not initiated the penalty proceedings. We have also perused the Notice dated 15.12.2011 issued by the AO for initiation of penalty and directing the assessee to appear before him. For the sake of convenience, some of the contents of the penalty Notice dated 15.12.2011 are reproduced as under:-

**".....it appears to me that you:-**

**\* have without reasonable cause failed to furnish the return of income which you were required to furnish notice given under section 22(1)/22(2).34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961 No..... dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.**

**\* have without reasonable cause failed to comply with a notice under section 22(1)/22(2)/34 of the Indian**

**Income Tax /Act, 1922 or under section 142(1)/143(2) of the Income Tax Act, 1961.**

**√\* have concealed the particulars of your income \_\_\_\_\_ or furnished inaccurate particulars of such income.**

***You are hereby required to appear before me at 11.00 AM/PM on 16.01.2012 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity to being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271."***

10.1 After perusing the aforesaid contents of the Notice dated 15.12.2011, we are of the view that the AO has initiated the penalty for concealment of particulars of income or furnishing of inaccurate particulars, which is contrary to the provisions of law. We are of the view that notice issued by the AO u/s. 271(1)© read with Section 274 of the Act is bad in law as it does not specify which limb of section 271(1)© of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars. Therefore, the penalty in dispute is not sustainable in the eyes of law. Our aforesaid view is supported by the following decisions:-

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion no substantial question of law arises – decided in favour of assessee."
- ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate

particulars of income – Decided in favour of assessee.”

- iii) ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014 wherein the Tribunal has observed as under:-

*"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the Notice dated 26.3.2013 issued by the AO for initiating the penalty and directing the assessee to appear before him at 11.30 AM on 26/04/2013 and issued a Show Cause to the assessee stating therein that **".....you have concealed the particulars of your income or furnished inaccurate particulars of such income..."**. After perusing the notice dated 26.3.2013 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income or concealment of income as well as in the penalty order dated 30.9.2013 AO has stated that he is satisfied that the assessee has concealed particulars of his income, which is contrary to law. In view of above, the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-*

i) *"CIT & Anr. Vs. M/s SSA's Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion no substantial question of law arises - decided in favour of assessee."*

ii) *CIT & Anr. Vs. M/s SSA's Emerald Meadows - Hon'ble Supreme Court of India - reported in 2016 (8) TMI 1145 - Supreme Court. The Apex Court held*

*that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income – Decided in favour of assessee.”*

*8. In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”*

iv) ITAT, 'D' Bench, New Delhi decision dated 26.5.2017 in the case of Rajender Jain vs. ACIT passed in ITA No. 6804/Del/2013 wherein the Tribunal has observed as under:-

*"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the assessment order wherein the AO has recorded his satisfaction on the page 2, 2<sup>nd</sup> para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act*

*for furnishing inaccurate particulars of income/concealment of income.” We have also perused the notice dated 31.12.2007 issued by the AO for initiating the penalty and directing the assessee to appear before him at -----AM/PM on -----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income.*

*7.1 However, the Ld. CIT(A) has given clear finding regarding the furnishing of inaccurate particulars. For the sake of convenience, the relevant para no. 5.3.1 of the impugned order passed by the Ld. CIT(A) is reproduced as under:-*

*“5.3.1 The above findings of the Ld. CIT(A) clearly establishes that the appellant has concealed the income of Rs. 26,50,500/- and did not declare in the return of*

*income inspite of admitting a disclosure of Rs. 40,00,000/- during survey. Thus, the appellant has furnished inaccurate particulars of his income. The facts of the case clearly reveal that the appellant tried to evade payment of taxes by furnishing inaccurate particulars of income. Therefore, I hold that the AO was fully justified in levying the penalty u/s. 271(1)(c) of the Act. The penalty levied by the AO is upheld. This ground of appeal is rejected."*

*8. Keeping in view of the aforesaid finding of the Ld. CIT(A), we are of the considered view that the AO has passed the assessment order wherein the AO has recorded his satisfaction on the page 2, 2<sup>nd</sup> para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." Further the AO vide his Notice dated 31.12.2007 for initiating the penalty and directed the assessee to appear before him at -----AM/PM on ----  
----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be*

*made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income. In our view the penalty in dispute is not sustainable in the eyes of law, because the AO has not recorded any clear finding whether the assessee was guilty of concealment of income or furnishing of inaccurate particulars of income. Secondly, the notice u/s. 271(1)(c) has been issued to the assessee levying the penalty for furnishing of inaccurate particulars of income/concealment of income, whereas the penalty in dispute has been levied by the AO on account of furnishing of inaccurate particulars. In our view the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-*

*i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did*

*not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620-Karnataka High Court. Thus since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion no substantial question of law arises – decided in favour of assessee.”*

- ii) *CIT & Anr. Vs. M/s SSA’s Emerald Meadows – Hon’ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income – Decided in favour of assessee.”*

*8.1 In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”*

11. Keeping in view of the aforesaid discussions and respectfully following the aforesaid precedents, we cancel the penalty in dispute by respectfully following the aforesaid decisions and allow the additional ground raised by the assessee. Since the penalty has been cancelled, the other grounds have become academic and need not be adjudicated.

12. In the result, the appeal filed by the Assessee stand allowed.

Order pronounced on 05/02/2019.

**Sd/-**  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date: 05/02/2019*

**SRBhatnagar**

**Copy forwarded to: -**

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches